

UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA  
228 WALNUT STREET  
HARRISBURG, PA. 17108

1 to D. DeLisario

THOMAS R. JONES,  
Petitioner

Vs.

JAKE MENDEZ, ETAL.,  
Respondents

Docket No: 01-3173

(D.C. Civ. No. 00-cv-02220)

(Kane, J.)

FILED  
HARRISBURG, PA

MAR 17 2003

MARY E. D'ANDREA, CLERK  
Per [Signature]  
Deputy Clerk

Motion to the UNITED STATES DISTRICT FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA SEEKING RELIEF  
From judgement rendered by the Court pursuant  
to Civil Rule 60(b)

Comes Now, the pro-se petitioner, Thomas R. Jones, Petitioner  
in the above captioned case, humbly, and, respectfully seeking  
Relief pursuant to Civil Rule 60(b) from the judgement  
rendered by the United States District Court for the  
MIDDLE DISTRICT OF PENNSYLVANIA in the above captioned  
Case.

(Pro-se litigants pleadings are to be construed liberally and  
held to less stringent standard than formal pleadings  
drafted by lawyers, if the Court can reasonably read pleading  
to state claim on which litigant could prevail, it should do so  
despite failure to cite proper legal authority, confusion of  
legal theories, poor syntax and sentence construction).  
Haines v. Kerner, 404 U.S. 519, 30 L.2d 2d 652 (1972).

Issue # 1

In this first issue, petitioner is presenting this Honorable Court with newly discovered evidence that would show that the reasons the Commission gave embodied in the Notice of Action, denying petitioner parole, and thus, going outside of the guidelines, are not rational reasons, or fact, and petitioner should not have been denied parole, and thus taken outside of the guidelines for the reasons embodied in the Notice of Action.

The Third Circuit has noted in Furnari v. Warden, 218 F.3d 252, 254 (3d Cir. 2000) that: "[t]he Commission is required, under 18 U.S.C. § 4206(b), to 'state with particularity the reasons' for denial of parole. See also 28 C.F.R. § 2.13(d)

Furthermore, the Third Circuit has stated, "(w)e do not find it either overly intrusive or contrary to the statute to require the Commission, which is under a statutory mandate to 'state with particularity the reasons for [parole] denial,' to truly provide reasons. We believe that a statement of reason must reveal reasoning, and not simply present conclusion, at least when the reasoning is not apparent from the facts of the case Marshall v. Lansing, 839 F.2d 933, 942-43 (3d Cir. 1988)

The Commission may take into account any substantial information available to it in establishing the prisoner's offense severity rating, salient factor score, and any aggravating or mitigating circumstances, provided the prisoner is apprised of the information and afforded an opportunity to respond. If the prisoner disputes the accuracy of the information presented, the Commission shall resolve such dispute by

the preponderance of the evidence standard, that is, the Commission shall rely upon such information only to the extent that it represents the explanation of the facts that best accords with reason and probability. (Please see, 28 C.F.R. § 2.19(c)).

With the above legal principles in mind, petitioner turns to the issue at hand.

The Commission went outside of the guidelines that the Commission set for petitioner based on information that the Commission has in its record which the Commission held as an accurate and reliable source in the Commission's record, in which petitioner argued that this information should not be held as a accurate or reliable source in the Commission's record, as the information in which the Commission relied upon is but mere third party hearsay.

The Commission has stated in the "Notice of Action" in its statement of reasons for justifying the offense as "exceptionally cruel" and thus, going outside of the guidelines the Commission gave to the petitioner, that: (You are a more serious risk than indicated by your base point score in that the instant murder involved an exceptional cruel killing of the victim by taking him unaware as he stood by his car in conversation with others. You proceeded to shoot him at least (6) times indicating that the murder was a deliberate assassination). Please see, Appendix A.

This is the Commission's statement embodied in the "Notice  
Page 3

of Action, for justifying the offense as exceptionally cruel, and thus going outside of the guidelines, and it comes from an arrest warrant in which petitioner was charged with 1<sup>st</sup> degree murder while armed. Please see Appendix B. The Commission used statements from an witness in the arrest warrant to support its conclusion of justifying the offense as "exceptionally cruel", and they are as follows:

(An eyewitness to this offense was located and interviewed. The witness stated that the victim was talking to others when an individual opened fire on Mr. Wilkins. The witness began to leave the area but before the witness left, it observed a second individual shooting at the decedent. The witness indicated that there was no apparent provocation for the shooting).

And

(The police conducting investigation into other matters, interviewed a second witness. As the witness was looking through photographs of individuals associated with the area of 21<sup>st</sup> and I street Northeast, the witness came to the photograph of Thomas Jones, PDID # 407-256, and indicated that Mr. Jones was the person who shot Mr. Wilkins. The witness indicated that at the time of the homicide it saw Mr. Jones produce a pistol and shoot at Mr. Wilkins as Mr. Wilkins stood next to a car.

And

(Bullets removed from the body of Ronald Wilkins were .38 calibre. The .38 calibre bullets were found to have markings leaving (5) grooves with a right twist. On March 16, 1994 at 11:50 a.m., Thomas Jones was

arrested at 719 13th Street, Washington. He was found to be in possession of a .38 calibre revolver. Bullets removed from the were compared to bullets fired from the pistol seized from Mr. Jones were found to have similar markings (5 groove with a right twist)).

These are the statements in which the Commission relied on from (the Commission's) record to support the Commission's reasons embodied in its statement of reasons for labelling the offense "exceptionally cruel", and thus going outside of the guidelines.

Even as petitioner argued that there is nothing in the Commission's record that would support the Commission reasons embodied in its statement of reasons ~~for labelling~~ the offense as "exceptionally cruel", stating that, "I took the victim unaware as he stood by his car in conversation with others, and, I proceeded to shoot him at least (6) times indicating that this murder was a deliberate assassination, This Honorable Court made a ruling that The record facts available to the Commission support its determination that the offense was unusually cruel. Petitioner approached an unarmed man and fired on him repeatedly until he was dead. The Board characterized the offense as a "deliberate assassination" and properly found that it qualified as exceptionally cruel.

From the Honorable Court's statement, petitioner

would like to express that there is nothing (in the Commission record) that said's whether the victim was armed or not, or that I fired on him repeatedly until he was dead, so this Honorable Court's statement is not supported by the record.

However, the issue is not this Honorable Court's statement, but is there a rational basis to support the reasons the Commission gave embodied in the "Notice of Action" for going outside of the guidelines.

Petitioner is presenting this Honorable Court "newly discovered evidence" of a factual proffer submitted by the U.S. Assistant Attorney whom prosecuted the original case, that will show that it is a fact that petitioner did not 'take the victim unaware as he stood by his car in conversation with others'. In the report (Factual Proffer) it states that (Mr. Wilkins was standing in the 2100 block of I Street, N.E. with three other men. During this time, a group of men walked up to Wilkins and the others and started talking). Petitioner was included in the group of men, and the next statement(s) show that (eg. A short time later, the group then said goodbye to Wilkins and began to leave. Thomas Jones and another man stopped turned and fired a Glock 9mm semi-automatic pistol and a .38 caliber revolver).

Being that the factual Proffer states that I was in the group of men talking to Mr. Wilkins (the victim), and in the Commission's report the witness stated that



there was no apparent provocation for the shooting, there isn't a fact or rational basis that would support the Commission's reason embodied in the "Notice of Action" stating that, (I took the victim unaware as he stood by his car in conversation with others). The Commission don't know what was said or done in this conversation that could have provoked the shooting. (Please see Appendix C, page 1) Also, in the "factual proffer" is evidence that would show that it is a fact that petitioner did not 'proceed to shoot the victim at least (6) times indicating that this murder was a deliberate assassination'.

In the report (Factual Proffer) it states that, (Thomas Jones and another man stopped, turned and fired a Glock 9mm semi-automatic pistol and a .38 caliber revolver. Wilkin was shot six times. (Please see, Appendix C, page 1)

The report further states that, (On December 17, 1993, one of the murder weapons, a Glock 9mm pistol, ect.) and (On March 16, 1994, Thomas Jones was arrested at 719 13th Street, N.W. He was found in possession of a .38 caliber revolver and another handgun, which was examined and found to be one of the murder weapons). (Please see Appendix C) Being that the Factual proffer states that petitioner and another man shot at the decedent, and, the decedent was shot with two different guns, a 9mm semi-automatic pistol and a .38 caliber revolver, and the victim (decedent) was shot a total of (6) times, and, being that the Commission's report states that bullet(s) instead of [the bullets] that came from the

victim's body had similar markings to bullets fired from the gun I possessed (bullet(s) meaning some of the bullets, [the bullets] means all of the bullets), there isn't a fact or rational basis that would support the Commission's reason embodied in the "Notice of Action" stating that, (You proceeded to shoot him at least (6) times indicating that this murder was a deliberate assassination).

The Commission don't know how many times I shot at, or shot the victim (decendent), but it is clear that I did not shoot the victim (decendent) 'at least (6) times'.

Based on this newly discovered evidence, and the arrest warrant, there is no rational basis to support the Commission's reasons embodied in the "Notice of Action" justifying the offense as exceptionally cruel, and thus going outside the guidelines.

Accordingly, this pro-se petitioner respectfully ask This Honorable Court to vacate its judgement and order, and remand this case (issue) back to the U.S. Parole Commission with instructions that the Commission can not go outside of the guidelines for the reasons that the Commission gave embodied in the Notice of Action, and accordingly, petitioner is to be given a new hearing.

Issue #2, The District Court did not entertain the issue



that the petitioner was violated of his due process right under the Commission's statute and rules and regulations when the denied the petitioner parole and went outside of the guidelines for the reasons embodied in the "Notice of Action".

On April 4, 2000, the U.S. Parole Commission conducted a initial parole hearing for petitioner. At the Conclusion of the hearing, the examiner (whom conducted the hearing) told the petitioner that he would recommend to the U.S. Parole Commission panel that the petitioner have a rehearing in (20) months, because petitioner's base point and total point score was too high to recommend that the petitioner be granted parole at the initial parole hearing. With a base point score of (+6) points and a total point score of (+5) points (which examiner assigned to the petitioner) the guidelines at 28 C.F.R. § 2.80 indicate that petitioner should have a rehearing between ~~(18)~~ to (24) months. Upon petitioner receiving his "Notice of Action" from the U.S. Parole Commission, the parole Commission stated that the petitioner was denied parole and to continue for a rehearing in December 2005, (going outside of the guidelines for the reason stated in the "Notice of Action"). The "Notice of Action" ended with that the Action was not appealable. (Please see, Appendix A).

Congress has charged the parole Commission with conducting parole hearings and thereafter determining whether a given prisoner is eligible for parole. 18 U. § 4201 et seq.

In order to ensure that a prisoner's due process rights are respected throughout parole determination, Congress both (a) codified certain procedural statutes to guide the Commission, eg. 18 U.S.C. § 4206, and (b) authorized the Commission to promulgate rules and regulations and to administer parole eligibility determination in a fair manner 18 U.S.C. § 4203(a)(1). The Commission in response, established 28 C.F.R. § 2 et. seq.

The Parole Commission's handling of the petitioner's initial parole hearing demonstrates a disregard of these rules and regulations, the sum total of which is a denial of petitioner due process right.

The petitioner did not receive an opportunity at his initial parole hearing or after his initial parole hearing to rebut the allegations embodied in the "Notice of Action" to deny him parole and go outside of the guidelines.

This action on the part of the Parole Commission constitutes a violating of 28 C.F.R. § 2.53 by failing to provide a hearing complying with 28 C.F.R. § 2.19(c).

The Commission may (as well) deny parole, but it must explain with particularity the reason for the denial and include a summary of the information relied on in making this determination.

There is no question that the Commission is entitled to consider documents pertaining to the petitioner, but the Commission must provide a prisoner with notice that the information will be used as evidence to deny him parole, and the prisoner must have an opportunity to respond to the evidence in the documents. 28 C.F.R. § 2.19(c) ("[T]he Commission may take into account any substantial information available to it . . . . and any aggravating and mitigating circumstances provided the prisoner is apprised of the information and afforded an opportunity to respond."). Patterson v. Gunnell, 735 F.2d 253, 255 (2d Cir. 1985) (holding that where the National Appellate board had information unknown to prisoner and on which it relied, prisoner case had to be returned for a new hearing so that prisoner would not be "deprived . . . . of a procedural protection guaranteed by the Commission regulations.").

Furthermore, the opportunity to respond to the evidence in the documents must take place before the examiner proffers his recommendation. 28 C.F.R. § 2.19(c) explains that after the prisoner has had an opportunity to respond to the evidence, if there exist a factual dispute the Commission shall resolve it according to the preponderance of evidence. It is inconceivable that Congress intended this fact-finding to take place after a hearing examiner makes his determination to grant or deny parole, (quoting GAMBINO v. MORRIS, 134 F.3d 156 (3rd Cir. 1998), especially since D.C. code offenders don't have

the opportunity of appealing the decision.

In the case at hand, the Parole examiner whom conducted the petitioner's initial parole hearing, gave petitioner his recommendation (which was denied parole, which stemmed from the calculation of the examiner's scoring of petitioner's severity rate of his current offense). The examiner gave the petitioner a base point score of (+6) points, and a total point score of (+5) points. The examiner explained to the petitioner, that being that the guidelines at 28 C.F.R. § 2.80 recommend that the petitioner should be scheduled for a rehearing between (18) to (24) months, he would recommend that petitioner have a rehearing in (20) months.

This was the reason that the examiner denied parole, and recommended that the petitioner have a rehearing in (20) months.

Upon the petitioner receiving his "Notice of Action" from the U. S. Parole Commission denying parole and going outside of the guidelines for different reasons than the examiner's which are embodied in the "Notice of Action" (Please see, Appendix A).

The Commission never expressed where this information came from, or the documents in which it obtained this information.

Furthermore, the Commission did not afford the petitioner the opportunity to respond (Please note, that the "Notice

states that the action is not appealable).

This is a very significant issue, because even as the Commission did not inform petitioner of the documents or information which it used to come up with its determinations and conclusions embodied in its Notice of Action for denying parole and thus going outside the guidelines, the Commission denies the petitioner the opportunity to respond to the allegations in the "Notice of Action" by saying that the action is not appealable, which is in violation of the Commission's rules and regulations. (Please see, 28 C.F.R. § 2.19(c), "[t]he Commission may take into account any substantial information available to it.... and any aggravating and mitigating circumstances, provided the prisoner is apprised of the information and afforded an opportunity to respond".).

In sum, it is clear that the Commission failed to comply with 18 U.S.C. § 4206 (c), and 28 C.F.R. § 2.13 (d) by failing to adequately summarize the information it relied on in denying petitioner parole, and thus going outside of the guidelines.

It is also clear that the Commission failed to comply with 28 C.F.R. § 2.19(c) when the Commission failed to afford the petitioner the opportunity to respond to the information the Commission relied on for denying parole, and thus, going outside of the guidelines.

Being that the Commission is required by both statute and

regulation to comply with 18 U.S.C. § 4206 (c) and 28 C.F.R. § 2.19 (c), and the Commission's failure to comply with the Statute and regulations (in petitioner's initial hearing process). Either of these two errors is serious enough to warrant the District Court to vacate its judgement and order, and a remand to the Parole Commission for a new parole hearing. Patterson v. Gunnell, 753 F.2d 253 (2d Cir. 1985) (remanding for new parole hearing upon finding of Commission's failure to comply with 28 C.F.R. § 2.19(c)'s notice provision); Marshall v. Lansing, 839 F.2d 933, 943 (recognizing that setting aside the Commission's action and remanding for a new hearing is appropriate where agency fails to comply with its own regulations) (3d Cir. 1988). Please also see, GAMBINO v. MORRIS, 134 F.3d 156 (3d Cir. 1998).

This issue was before The Honorable District Court upon the petitioner filing his habeas Corpus pursuant to 28 U.S.C. § 2241. The pro-se petitioner may not have presented this issue in great detail, however, the pro-se petitioner did make inquiry to this issue.

(Pro-se litigants pleadings are to be construed liberal and held to less stringent standard than formal pleading drafted by lawyers; if the Court can reasonably read pleadings to state claim on which litigant could prevail, it should do so despite failure to cite proper legal authority.



confusion of legal theories, poor syntax and sentence construction). Haines v. Kerner, 404 U.S. 519, 30 L. ed 2d 252 (1972).

It is clear that the Honorable Court was well affiliated with this issue, because the Court quoted 28 C. F. R. § 2.19(c) in its judgement—order, however, the Honorable Court did not address this issue.

The Third Circuit Court of Appeals has noted that review of the Parole Commission's actions (should consider whether the Commission "has followed criteria appropriate, rational and consistent' with its enabling statutes so that its 'decision is not arbitrary and capricious, nor based on impermissible considerations.'"). Please see, Zannino v. Arnold, 531 F. 2d at 690).

For the above reasons, petitioner respectfully ask this Honorable Court to vacate its judgement and order, and remand the case to the Parole Commission, with instructions for the Commission to give petitioner a new parole hearing, and for the Commission to abide by the Commission's Statute and regulations.

Issue #3, This District Court misinterpreted my argument of Double Counting.

The petitioner's intent for raising the issue of double counting was because the Parole Commission scored the

petitioner twice under its guidelines for the violence that occurred in the current offense, which would take petitioner outside of the guidelines than he would normally have.

The Commission gave the petitioner (+6) points for his salient factor score (which means that petitioner is a good parole risk). From this, petitioner was given (+1) point from his salient factor score to be added to his base point score, where petitioner received (+2) points under the category current or prior violence, for violence in the current offense, and (+3) points under the category Death of victim or high level violence, for current offense was high level or other violence with death of victim resulting.

The parole Commission double counted petitioner by scoring the petitioner twice under the Commission's guidelines for its "base point" score when the Commission gave petitioner (+2) and (+3) points for the violence that occurred in the current offense.

For the Commission to give petitioner (+2) points and (+3) point for [the] violence that occurred in [the] current offense, would result in inappropriate "Double Counting", because the Commission would be employing the same criteria twice under the Commission's guidelines established for "seriousness of risk".

The petitioner was given point for [the] violence and death

of the victim, when petitioner was give (+3) points for current offense was high level or other violence with death of the victim resulting.

Being that the base point score is to measure the prisoner's "seriousness of risk" of being released to the street, it would be an arbitrary action of the Commission to score petitioner twice for [the] violence that occurred in [the] current offense.

These may not be the exact arguments addressed in Harris v. Martin, 792 F.2d (3d Cir. 1986), however, The Third Circuit did state that, (Since the purpose of the guidelines is to set forth factors that the Commission should consider in setting a presumptive release date, it would be irrational and arbitrary to use the same factors to take a prisoner outside the guidelines) see, eg. Harris, 792 F.2d at 55.

The Commission is going outside petitioner's guideline range by "Double Counting" petitioner for [the] violence that occurred in [the] current offense, in which would result in the Commission setting a rehearing date beyond what he would normally have.

If petitioner were given (+1) point from his salient factor score to be added to his base point score of (+3) points for current offense was high level or other violence with death of victim resulting, petitioner would have a base point score of (+4) points. With the (-1) point deduction petitioner received for ordinary program achievement, petitioner would end up with a total point score of (+3) points, which would mean that petitioner should be scheduled for a rehearing between (12) - (18) months, and at the rehearing

petitioner would be eligible for parole with (+3) points. However, being that the Commission scored the petitioner twice for [the] violence in [the] current offense for "seriousness of risk", giving petitioner a base point score of (+6) points and a total point score of (+5) points; would mean that petitioner should be scheduled for a rehearing between (18) — (24) months, and at the rehearing, petitioner would be denied parole with a total point score of (+5) points, because the most points a prisoner can have at a rehearing is (+3) points.

The petitioner tried to show the Honorable Court that the Commission was using the same factors to take petitioner outside of the guidelines (the he should have). It is evident that the petitioner was unsuccessful at getting this issue accross, however; the Honorable Court was aware of this issue but did not entertain this issue.

In its (District Court) order and judgement; the Court stated that, ("Jones properly was assessed the highest points possible under category III for death of victim or high level violence ("Within the D.C. offenders guidelines, murder is defined as "High level violence").

(Pro-se litigants pleading are to be construed liberally and held to less stringent standard than formal pleadings drafted by lawyers; if the Court can reasonably read pleadings to state claim on which litigant could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theory

poor syntax and sentence construction). Haines v. Kerner, 404 U.S. 519, 30 L. ed. 2d 652 (1972).

For the above reason(s), petitioner respectfully ask this Honorable Court to vacate its order and judgement, and to remand the case to the U.S. Parole Commission, with instructions that the Commission can not "double count" petitioner under it guidelines.

For all of the reasons stated in this motion, petitioner respectfully ask the District Court for the Middle District of Pennsylvania to grant the pro-se petitioner the relief sought.

Respectfully submitted,

Thomas R. Jones

Thomas R. Jones # 05208-0X

F.C.I. Allenwood

P.O. Box 2000

Whitewater, PA. 17887

I hereby certify and declare that I placed the enclosed 60(b) motion in the mail for legal mail, here at F.C.I. Allenwood, this 12 day of March 2003, to be issued to the Court and the opposing party, ie. Mr. Matthew E. Haggerty, esq., Assistant U.S. Attorney, at 316 Federal Building, 240 West Third Street, Williamsport, PA. 17703, and, Sharon Gervasoni, esq, UNITED STATES Parole Commission, 5550 Friends Boulevard, Chevy Chase, MD. 20815.

I further certify and declare under the penalty of perjury that the foregoing is true and accurate

Thomas R. Jones

Appendix A



United States Parole Commission  
5550 Friendship Boulevard  
Chevy Chase, Maryland 20815-7201

Name: JONES, Thomas

Institution: Allenwood USP

Register Number: 05208-000

DCDC No.: 258-784

In the case of the above-named, the following parole action was ordered:

Deny parole. Continue for a rehearing in December 2005, after the service of 60 months from your parole eligibility date of December 11, 2000.

**REASONS:**

Base Point Score: 6  
Total Point Score: 5

Under the guidelines for D.C. Code offenders at initial hearings, your Total Point Score includes a deduction of 1 point for ordinary program achievement.

The guidelines for adult offenders at initial hearings indicate that parole should not be granted at this time. After consideration of all factors and information presented, a departure from the guidelines at this consideration is not warranted.

With your Base Point Score of 6, the rehearing guidelines indicate that you should be scheduled for a rehearing within 18-24 months from your parole eligibility date. After consideration of all factors and information presented, a departure from the rehearing guidelines at this consideration is warranted for the following reason: You are a more serious risk than indicated by your base point score in that the instant murder involved an exceptionally cruel killing of the victim by taking him unaware as he stood by his car in conversation with others. You proceeded to shoot him at least times, indicating that this murder was a deliberate assassination. At your parole hearing, you falsely claimed that you shot the victim in self defense when he pulled a gun on you. Your lack of remorse, refusal to accept responsibility for this crime, and contempt for the evidence upon which you were convicted, warrants the conclusion that your participation in prison programming would not be a meaningful indicant of your rehabilitation.

THE ABOVE DECISION IS NOT APPEALABLE.

Copies of this Notice are sent to your institution and to your Supervision Officer. In certain cases copies may also be sent to the sentencing court. You are responsible for advising any others you wish to notify.

See the attached sheet for your individual item points and explanations of the Salient Factor Score, Base Point Score and Total Point Score. The tables at the bottom of the sheet present the parole and rehearing guidelines.

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Date: May 4, 2000

ALLISON

Clerk: las

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U.S. PAROLE-&gt;

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Page 882

1. .... A - Prior convictions/adjudications (adult or juvenile) None = 3; One = 2; Two or three = 1; Four or more = 0
2. .... B - Prior commitments of more than thirty days (adult or juvenile) None = 2; One or two = 1; Three or more = 0
1. .... C - Age at commencement of the current offense/prior commitments of more than thirty days (adult or juvenile) (see table below for an explanation)
1. .... D - Recent commitment free period (three years)  
No prior commitment of more than thirty days (adult or juvenile), or released to the community from last such commitment at least three years prior to the commencement of the current offense = 1; Otherwise = 0
1. .... E - Probation/parole/confinement/escape status violator this time  
Neither on probation, parole, confinement, or escape status at the time of the current offense; nor committed as a probation, parole, confinement or escape status violator this time = 1; Otherwise = 0
9. .... F - Older offenders  
If the offender was 41 years or more at the commencement of the current offense (and the total score from Items A-E above is 9 or less) = 1; Otherwise = 0
6. .... Salient Factor Score (SFS-98) (sum of points for A-F above)

Your Pts	Total Point Score	Item Explanations	TOTAL POINT SCORE
+1. ....	I - Contribution from Salient Factor Score	10-8 (Very Good Risk) = +0; 7-6 (Good Risk) = +1; 5-4 (Fair Risk) = +2; 3-0 (Poor Risk) = +3	
+2. ....	II - Current or Prior Violence	Violence in current offense and any felony violence in two or more prior offenses = +4; Violence in current offense and any felony violence in one prior offense = +3; Violence in current offense = +2; No violence in current offense and any felony violence in two or more prior offenses = +1; Possession of firearm in current offense if current offense is not scored as a crime of violence = +2; No violence in current offense and any felony violence in one prior offense = +1	
+3. ....	III - Death of Victim or High Level Violence	(Category III points are added to points scored in Categories I and II) Current offense was high-level or other violence with death of victim resulting = +3; Current offense involved attempted murder or violence in which death of a victim would have been a probable result = +2; Current offense was other high level violence = +1	
6. ....	Base Point Score (sum I-III above)		
+0. ....	IV - Negative Institutional Behavior	Negative institutional behavior involving: (1) assault upon a correctional staff member with bodily harm inflicted or threatened; (2) possession of a deadly weapon; (3) setting a fire so as to risk human life; (4) introduction of drugs for purposes of distribution; or (5) participating in a violent demonstration or riot = +2; Other negative institutional behavior = +1	
-1. ....	V - Program Achievement	Ordinary program achievement = -1; Superior program achievement = -2	
5. ....	Total Point Score (sum of Base Point Score and points for IV and V above)		

Adult Parole/Supervision Guidelines			Rehearing Guidelines		Points For SFS Item C			
Total Point Score	Initial Hearing	Rehearing	Base Point Score	Months to Rehearing	Age	Prior Commitments		
						0-3	4	5--
0	Grant Parole Low Supv	Parole With Highest Level of Supervision	0-4	12-18	26 & Up	3	2	1
1	Grant Parole High Supv		5-8	18-24	22-25	2	1	0
2	Grant Parole Highest Supv		9	22-28	20-21	1	0	0
3	Deny Parole		10	26-32	0-19	0	0	0
4+		Deny Parole						

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Date: May 4, 2000

Clerk: las

# Appendix B

## Superior Court of the District of Columbia

## CRIMINAL DIVISION

## AFFIDAVIT IN SUPPORT OF AN ARREST WARRANT

U.S. W. No.

0302152-4

DEFENDANT'S NAME: <b>Thomas Rudolph Jones</b>				CCR: <b>67-779</b>		PDID: <b>407-256</b>	
SEX: <b>Male</b>	RACE: <b>Black</b>	D.O.B.: <b>9-15-73</b>	HEIGHT: <b>6'2</b>	WEIGHT: <b>160</b>	EYES: <b>Bru</b>	HAIR: <b>Blk</b>	COMPLEXION: <b>Dark</b>
DEFENDANT'S HOME ADDRESS: <b>6604 Piney Branch Rd. N.W.</b>						TELEPHONE NUMBER:	
DEFENDANT'S BUSINESS ADDRESS:						TELEPHONE NUMBER:	

## COMPLAINANT'S NAME:

**Ronald Wilkins (Deceased)**

## LOCATION OF OFFENSE:

**F/O 2111 I. St. NE**

## DATE OF OFFENSE:

**11-22-93**

## TIME OF OFFENSE:

**2:00 PM**

## GIVE BRIEF DESCRIPTION OF WHAT HAPPENED:

PAGE 1 of 2

On Monday, November 22, 1993, at approximately 2:00 P.M., police officers of the Fifth District responded to a radio assignment for a shooting in the area of 21st and I Street N.E., Washington. Upon arrival, the officers found the unconscious body of Ronald Wilkins laying on the ground near the curb in front of 2111 I Street. Mr Wilkins was dead at the scene the apparent victim of multiple gunshots.

Mr Wilkins, remains were transported to the D.C. Medical Examiners Office where at 3:45 P.M. he was officially pronounced dead by Dr. Pierre-Louis. An autopsy was performed by a Deputy D.C. Medical Examiner, and the death was ruled a Homicide caused by six gunshot wounds.

An eyewitness to this offense was located and interviewed. The witness stated that the victim was talking to others when an individual opened fire on Mr Wilkins. The witness began to leave the area but before the witness left, it observed a second individual shooting at the decedent. The witness indicated that there was no apparent provocation for the shooting.

The witness identified the first shooter as a black male, 6'0 to 6'1, skinny, dark complexion, with plaits in his hair. The witness further described the individual by the name of Thomas and indicated that he lived in the high rise apartment building on 9th Street in Southeast Washington. The witness had the telephone number for Thomas and provided that to the police, it indicated that Thomas' mother lived around Maryland Avenue in Northeast.

Further investigation into the case revealed that Thomas Jones, PDID# 407-256, is a black male 6'2 tall, 160lbs, dark complexion, who wears plaits in his hair. In 1993, he resided at 3700-9th Street, Southeast; a high-rise apartment building. The telephone number provided by the witness was a number for a person residing at 3700-9th Street, Southeast. Thomas Jones' mother resides in the 2100 block of Maryland Avenue, Northeast.

TO: WARRANT CLERK

PLEASE ISSUE A WARRANT FOR:

AFFIANT'S SIGNATURE:

X

SUBSCRIBED AND SWORN TO BEFORE ME THIS

22nd

DAY OF December

19 94

Thomas Rudolph Jones

Charge With: Murder I While Armed

Assistant United States Attorney

NCIC Approved

(JUDGE) (DEPUTY CLERK) SUPERIOR COURT OF THE DISTRICT OF COLUMBIA



# Superior Court of the District of Columbia

## CRIMINAL DIVISION

### AFFIDAVIT IN SUPPORT OF AN ARREST WARRANT

U.S.W. No.:

USW 2152-94

DEFENDANT'S NAME: <b>Thomas Rudolph Jones</b>					C C R: <b>671-779</b>		PDID: <b>407-256</b>	
SEX: <b>Male</b>	RACE: <b>Black</b>	D.O.B.: <b>9-15-73</b>	HEIGHT: <b>6'2</b>	WEIGHT: <b>160</b>	EYES: <b>Brown</b>	HAIR: <b>Blk</b>	COMPLEXION: <b>Dark</b>	
DEFENDANT'S HOME ADDRESS: <b>6604 Piney Branch Rd. N.W.</b>						TELEPHONE NUMBER:		
DEFENDANT'S BUSINESS ADDRESS:						TELEPHONE NUMBER:		

COMPLAINANT'S NAME:

**Ronald Wilkins (Deceased)**

LOCATION OF OFFENSE:

**F/O 2111 I. St. NE**

DATE OF OFFENSE:

**11-22-93**

TIME OF OFFENSE:

**2:00 PM**

GIVE BRIEF DESCRIPTION OF WHAT HAPPENED:

PAGE 2 of 2

The police, conducting investigation into other matters, interviewed a second witness. As the witness was looking through photographs of individuals associated with the area of 21st and I Streets Northeast, the witness came to the photograph of Thomas Jones, PDID# 407-256, and indicated that Mr Jones was the person who shot Mr Wilkins. The witness indicated that at the time of the homicide it saw Mr Jones produce a pistol and shoot at Mr Wilkins as Mr Wilkins stood next to a car.

Bullets removed from the body of Ronald Wilkins were .38 calibre. The .38 calibre bullets found to have markings leaving 5 grooves with a right twist.

On March 16, 1994 at 11:50 A.M., Thomas Jones was arrested at 719-13th Street, Northwest, Washington. He was found to be in possession of a .38 calibre revolver. Bullets from the were compared to bullets fired from the pistol seized from Mr Jones were found to have similar markings (5 grooves with a right twist).

In view of the above facts and circumstances it is requested that a D.C. Superior Court Judge issue a warrant for the arrest of Thomas R. Jones charging him with the Murder Of Ronald Wilkins.

TO: WARRANT CLERK

PLEASE ISSUE A WARRANT FOR:

**Thomas Rudolph Jones**Charge With: **Murder I While Armed**

AFFIANT'S SIGNATURE:

X

SUBSCRIBED AND SWORN TO BEFORE ME THIS

**22ND**DAY OF **December****19 94**

**David Scherker** 12-22-94  
ASSISTANT UNITED STATES ATTORNEY

**Samuel B. Block**  
(JUDGE) DEPUTY CLERK SUPERIOR COURT  
OF THE DISTRICT OF COLUMBIA

Appendix C



SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
CRIMINAL DIVISION - FELONY BRANCH

FILED

UNITED STATES OF AMERICA

: Court Case No. F-723-95

FEB 5 4 51 PM '96

v.

: Judge WINFIELD

THOMAS R. JONES,  
Defendant.

: Trial Date: 4-23-96

CLERK OF  
SUPERIOR COURT OF THE  
DISTRICT OF COLUMBIA  
FELONY BRANCH

NOTICE OF INTENT TO USE  
EVIDENCE OF PRIOR AND SUBSEQUENT GUN POSSESSION

The United States, by and through its attorney, the United States Attorney for the District of Columbia, hereby notifies the Court of its intention to introduce evidence of defendant's possession of firearms prior and subsequent to the offense date in this case. Specifically, the United States states as follows:

FACTUAL PROPPER

On November 22, 1993, at approximately 2:00 p.m., Ronald Wilkins was standing in the 2100 block of I Street, N.E. with three otheir men. During this time, a group of men walked up to Wilkins and the others and started talking.

A short time later, the group then said goodbye to Wilkins and began to leave. Thomas Jones and another man stopped, turned and fired a Glock 9mm semi-automatic pistol and a .38 caliber revolver. Wilkins was shot six times. Police officers from the Fifth District responded to a radio assignment for the shooting. Upon arrival, they found Wilkins laying unconscious near the curb in the front of 2111 I Street. He appeared to be dead at the scene. Several bags of cocaine were recovered from him.

Wilkins was transported to the D.C. Medical Examiners Office where he was officially pronounced dead. An autopsy was performed

and the cause of death was found to be multiple gunshot wounds and the manner of death was ruled to be homicide.

On December 17, 1993, one of the murder weapons, a Glock 9mm pistol, was recovered from Shannon Battle who was stopped in a car with James Cullison, Marcus Brooks, and Roy Tatum, not far from the murder scene. On March 16, 1994, Thomas Jones was arrested at 719 13th Street, N.W. He was found to be in possession of a .38 caliber revolver and another handgun, which was examined and found to be one of the murder weapons.

The government seeks to introduce evidence that defendant Jones actually and constructively possessed the same or similar weapons that were used to kill Ronald Wilkins, during the month of November, 1993, and during the early part of December, 1993. The government will not elicit on direct examination any evidence that one or both of the murder weapons in this case were also used: in the murder of Andre Wynn on November 8, 1993, in the murder of Mark Tinsley on November 20, 1993, the shooting of a person on November 25, 1993, the murder of Brad Myers on November 27, 1993, the murder of James Butler on November 27, 1993, the murders of Ron and Annis Holder on November 30, 1993, the murder of Ronald Thomas on December 7, 1993, and the murder of Donte Grate on December 11, 1993. The government will be prepared to offer evidence regarding these murders on redirect examination or in its rebuttal case.

#### ARGUMENT

The District of Columbia Court of Appeals has held that "evidence of possession of a weapon on an earlier occasion by one

later charged with using a similar weapon is probative, relevant evidence". Marshall v. United States, 623 A.2d 551, 554 (D.C. 1992) (testimony that witness had seen defendant in possession of Derringer two months prior to killing admissible both under Drew and relevance grounds). The Marshall Court stated that: "The prior possession by an accused of the physical means of committing the charged offense is evidence of the probability of his guilt and is therefore admissible. Id. at 554.

The District of Columbia Court of Appeals "[has] repeatedly held that admissibility of this kind of evidence is based upon a determination of whether it was directly relevant to some issue in the case" King v. United States, 618 A.2d 727, 730 (D.C. 1993) (pistol recovered from appellant's friend's apartment thirteen days after shooting properly admitted where evidence sufficiently linked it in appearance to pistol observed in appellant's possession on day of offense). "The evidence must have some connection with the defendant or the crime with which he is charged, and should not be admitted if the connection is too remote or conjectural." Ali v. United States, 581 A.2d 368, 375 (D.C. 1990) (emphasis in original) (quoting Burleson v. United States, 306 A.2d 659, 661 (D.C. 1973)). The Court has specifically held that this type of evidence is not "other crimes" evidence subject to analysis under Drew v. United States, 331 F.2d 85 (1964). "We have never held, and do not do so now, that such evidence must meet the standards established by the Drew line of cases." King, supra, at 730 (citing Johnson v. United States, 596 A.2d 980, 986-87 (D.C. 1991), cert. denied, Bullock v.

United States, 112 S.Ct. 1987 (1992)). Thus, the trial court is not required to undertake the analysis of weighing the probative value of the evidence against its prejudicial effect, as required for "other crimes" evidence. See id.

Observations of the defendant's possession of a Glock 9 mm pistol and a .38 caliber revolver establishes a connection with the defendant and the crimes charged, and is "evidence of the probability of [his] guilt". Marshall, supra at 554.<sup>1</sup> In Ali, supra, 581 A.2d at 375-77, the decedent was killed by a sawed-off shotgun which was not recovered. The District of Columbia Court of Appeals affirmed the admission into evidence of photographs of the defendant with a sawed-off shotgun taken one month before the murder. The Court held that the evidence was sufficiently connected to the charged crime to satisfy the test for relevance and that it constituted evidence of the crime charged; therefore, it was not subject to a Drey analysis. Here, there is a direct connection between the weapons and the crimes charged in the indictment -- the defendant possessed weapons that are the same or similar to the murder weapons before and after the slaying of Ronald Wilkins.<sup>2</sup>

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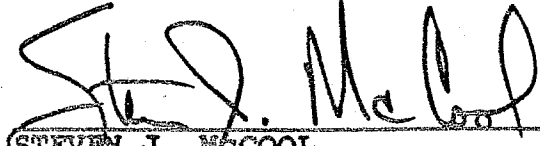
<sup>1</sup>Any uncertainty that the gun described by the witnesses is the same gun that was used to the kill the decedent "would go to the weight of the evidence rather than its admissibility." King, supra, at 730 (citing Ali, supra, at 375).

<sup>2</sup>The time lapse between the observations of the defendant's possession of the above-described firearms are not too remote. See, Marshall, supra (prior possession of pistol two months before crime); Jones v. United States, 477 A.2d 231, 239 (D.C. 1984) (possession of pistol one month before shooting); Coleman v. United States, 379 A.2d 710, 712 (D.C. 1977) (photo of defendant with

WHEREFORE, the United States respectfully notifies the Court of its intent to use evidence of defendant's prior and subsequent gun possession.

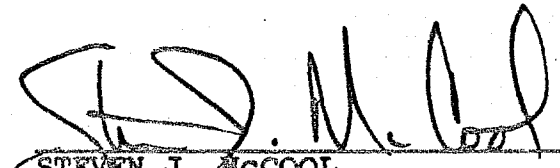
Respectfully submitted,

ERIC H. HOLDER, JR.  
UNITED STATES ATTORNEY

  
STEVEN J. MCCOOL  
ASSISTANT UNITED STATES ATTORNEY  
555 4th Street, N.W., Room 4239  
Washington, D.C. 20001  
(202) 514-7504

CERTIFICATE OF SERVICE

I HEREBY certify that a copy of the foregoing opposition has been sent by first class mail to counsel for defendant Thomas Jones, Steven Kiersh, Esquire, 1825 K Street, N.W., Suite 901, Washington, D.C. 20006, this 5th day of February, 1996.

  
STEVEN J. MCCOOL  
Assistant United States Attorney

\_\_\_\_\_  
pistol five months earlier).

F.C.I. Allenwood  
P.O. Box 2000  
Whitewater, PA. 17887

CERTIFIED MAIL



7002 0510 0001 8777 2355

RETURN RECEIPT REQUESTED

ALLENWOOD FEDERAL CORRECTIONAL INSTITUTION  
WHITE DEER, PA 17887-2500

DATE

MAR 14 2003

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Clerk of the Court  
of the Honorable

Judge Yvette KANE

U.S. District Courthouse

228 Walnut Street

P.O. Box 983

Harrisburg, PA. 171